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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,254	01/04/2002	Thierry Valet	60559-301701	9462

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EXAMINER

PIZIALI, JEFFREY J

ART UNIT	PAPER NUMBER
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2629

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/040,254	<b>Applicant(s)</b> VALET, THIERRY	
	<b>Examiner</b> Jeff Piziali	<b>Art Unit</b> 2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006 and 26 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-10,13-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-5,7-10,13-18 and 20-24 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings were received on 26 September 2005. These drawings are acceptable.

### *Election/Restrictions*

2. This application (as of the 'Response to Notice of Non-Compliant Amendment' filed on 12 May 2006) contains claims directed to at least the following patentably distinct species and sub-species:

**Species I**, drawn to *a handheld computer device having a motion sensor embedded within the device* [see Page 7, Line 32 - Page 8, Line 2 of the instant Specification, for instance], and

**Species II**, drawn to *a handheld computer device having an add-on attachment which incorporates a motion sensor* [see Fig. 3; Page 7, Lines 29-31 of the instant Specification, for instance]; wherein **Species I** and **Species II** are each separately directed to at least the following patentably distinct sub-species:

**Sub-Species A**, drawn to *a motion sensor configuration wherein an accelerometer chip is mounted at a non-perpendicular angle*

*with respect to a circuit board [see Fig. 7; Page 9, Lines 3-15 of the instant Specification, for instance], and*

**Sub-Species B**, drawn to *a motion sensor configuration wherein an accelerometer chip is mounted in plane with a slanted circuit board [see Fig. 8; Page 9, Lines 16-22 of the instant Specification, for instance].*

The species and sub-species are respectively independent or distinct because the species and sub-species do not overlap in scope, i.e., are mutually exclusive; the species and sub-species are not obvious variants; and the species and sub-species each have a materially different design, mode of operation, function, and effect. Although the aforementioned divergent subject matter was more or less intact at the time of the previous office action (mailed 22 March 2005), the applicant's claim amendments (filed 12 May 2006) and remarks (filed 26 September 2005) have persuaded the examiner that independent/distinct species and sub-species are present, which if left unchecked would result in a serious examination burden henceforth.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species and sub-species (e.g., Species I, Sub-Species A) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species and sub-species that are elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is

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allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species and sub-species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicants must indicate which are readable upon the elected species and sub-species. MPEP § 809.02(a).

3. A telephone call was made to Dongyul Kim (Registration Number 57,048) on 21 July 2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In

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either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

***Conclusion***

The applicant is hereby notified that the examiner's art unit has recently changed from Art Unit 2673 to Art Unit 2629, please direct all future correspondence accordingly. Thank you.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Piziali whose telephone number is (571) 272-7678. The examiner can normally be reached on Monday - Friday (6:30AM - 3PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bipin Shalwala can be reached on (571) 272-7681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



J.P.

21 July 2006